

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO. 444 OF 1997

Sonabai Naragsonda Patil & Ors. Appellants.

Versus

Darshakka W/o Surgonda Patil & Ors... Respondents.

Mr. S. G. Deshmukh for the Appellants.

Mr. A. A. Kumbhakoni for Respondent No.1.

CORAM : ANOOP V. MOHTA, J.

DATED : 17TH NOVEMBER, 2005.

P.C.:

Heard learned Counsel.

2. The present second appeal is against the concurrent findings given by the Courts below whereby the original Plaintiff's suit seeking for partition, which was filed in the year 1969, has been decreed holding that the Plaintiff has got 1/4th share in the properties referred to, in the suit.

3. The Plaintiff - Darashakka married on 11th April,

1944 to Surgonda who died in the year 1954. Defendant No.1 is the wife of Narasgonda. Surgonda and Narasgonda were the sons of one Bhujgonda Patil. These two brothers were holding the suit lands jointly being ancestral property. As Narasgonda died in the year 1940, Surgonda was cultivating the family land along with Sonabai (Defendant No.1). Plaintiff has no issue from Surgonda and left the field and was staying at parental home. Plaintiff used to get half of the agriculture income from the suit land. As Defendant No.1, Sonabai stopped sharing income from the suit land, plaintiff demanded partition and her separate position and the share in the suit properties. As Defendant No.1 resisted the same, Plaintiffs had filed a suit for partition against Defendant Nos.1 to 3. Defendant No.3 claims to be tenant in the suit land and therefore resisted the possession of the land in occupation. Defendant Nos.1 and 3 contended that the Plaintiff was not the wife of Surgonda. Defendant No.2 has been adopted by Defendant No.1. They further contended that the lands in question sr. 2 & 6 to 18, are "Patilki Watan Land" as Defendant No.2 was in government service the land were re-granted in his favour. He became exclusive owner of such lands. They further contended that the remaining lands are

Inam lands. Therefore, the Plaintiff has no right, title or interest in these lands. They further contended that so far as Rayatwalla land is concerned, as Surgonda died on 1-9-1954 the Plaintiff has no right in view of Hindu Womens Rights to the Property. It devolved on Defendant No.2 as nephew of Surgonda. After considering the material based on the record, a finding is given and confirmed by the Courts below that Plaintiff is legally wedded wife of Surgonda. Defendant Nos.1 and 2 failed to prove that lands as referred the Inam Lands, had become exclusive owner of the same and/or they are the exclusive properties of Defendant Nos.1 and 2. They further failed to prove that after the death of Surgonda, properties devolved on Defendant No.2 as his sole legal representative. Both the Courts, therefore, granted the partition. The appellate Court, however, modified the order and granted 1/4th share in the lands at sr.No.12 to 18. There is no challenge to this impugned judgment and order by the Plaintiff. Therefore, the order of granting 1/4th share in the lands has become final and binding even to Respondent No.1 / Original Plaintiff.

4. Learned Counsel appearing for the Appellants - defendants basically contended that the decision given

by the appellat Court is based on the concession expressed by the advocate during the course of the argument. It is to be noted that there was no objection of any kind raised at any point of time in so far as the alleged concession is concerned. Apart from that in para 22 of the Appellate Court's order, it has been observed that "the appellant has fairly conceded that though the lands have been re-granted in the name of Defendant No.2, they were re-granted for the joint family" of the parties. This view has been taken by the appellate Court on the concession and/or admission of disclosed fact. The impugned judgment therefore, cannot be said to be perverse or contrary to the record.

5. After considering rival contention raised by the parties, both the courts have concurrent in granting a decree for partition based on the judgment of the Supreme Court on the Hindu Women's right to Property Act and the rights on Inami lands, on the fact and circumstances of the case. In Annasaheb Bapusaheb Patil & Ors. v/s. Balwant alias Balasaheb Babusaheb Patil (decd.) by Lrs. and heirs., 1995 (3) Bom. C.R. 379, the Apex Court has considered this aspect of re-granting of Watan Lands in reference to Hindu Law

of coparcenry and partition and observed that abolition of Watan, the lands became joint family properties and coparceners have right to claim partition. The Apex Court in Daya Singh v/s Dhan Kaur, AIR 1974 SC 665, as relied by the appellate Court, has considered the right of hindu widow and considered its effect after coming into force the Hindu Succession Act i.e. after 1956. The Plaintiff / Respondent No.1 has filed the present suit on 25th April, 1969. Therefore, the courts below have rightly considered the right of Plaintiffs based on existing provisions of Hindu Succession Act and granted the partition based on her right being a widow of a coparcener.

6. The confirmation of the Judgment by the Appellate Court after dealing with the observations and the issues raised before the trial Court and looking to the totality and the circumstances of the case, with the material evidence available on record, I see no reason to interfere with the concurrent findings given by both the courts below.

7. Hence second appeal is rejected.

Sd/ -

(ANOOP V. MOHTA, J.)